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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

JUL - 2 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 97-169
Table of Allotments)	
FM Broadcast Stations)	RM-9121
(Coon Valley and Westby, Wisconsin)	RM-9170
and Lanesboro, Minnesota))	

To: Mass Media Bureau (Policy and Rules)

PETITION FOR RECONSIDERATION

Sparta-Tomah Broadcasting Company, Inc., ("Sparta-Tomah") by its attorney, and pursuant to §1.429 of the Commission's Rules, hereby submits its Petition for Reconsideration of the Report and Order, DA 98-932, released May 22, 1998.¹

Sparta-Tomah initiated this proceeding by petitioning for the allotment of Channel 280A as a first local service at Coon Valley. Bluff Country Community Radio ("Bluff Country") filed a counterproposal to allot Channel 280A as a first local service at both Westby, Wisconsin, and Lanesboro, Minnesota, with both to be reserved for noncommercial use. Use of Channel 280A at either Westby or Lanesboro is mutually exclusive with Sparta-Tomah's proposed allotment of Channel 280A at Coon Valley.

In order to satisfy its desire for Channel 280A at Coon Valley as well as to accommodate Bluff Country's proposal for non-commercial allotments at Lanesboro and Westby, Sparta-Tomah showed in Reply Comments that reserved Channel 207A was available

¹ This Petition is timely filed within thirty days of the June 3, 1998, Federal Register publication. See, §1.4 of the Rules.

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for use at Westby, and reserved Channel 203A was available for use at Lanesboro. In addition, Sparta-Tomah showed that the proposal for Channel 280A at Westby would not provide a 70 dBu contour over that entire community, as required by Section 73.315 of the Commission's Rules.

The Report and Order finds that Channels 207 and 203 are not available for Westby and Lanesboro, respectively, due to perceived shortspacings with facilities authorized at Rochester, Minnesota, and La Crosse, Wisconsin. The Report and Order states further that the Commission's own study indicated that Channel 280A is the only channel available for allotment purposes at each of the proposed communities, and will provide sufficient 70 dBu coverage over Westby from the proposed reference coordinates in accordance with the Commission's rules. Lastly, the Report and Order finds that Lanesboro (population 858)² and Westby (population 1,866) are larger than Coon Valley (population 817), and that each of the proposed communities is well served by aural reception services. On the basis of these findings, the Commission allotted Channel 280A to both Westby and Lanesboro in lieu of Coon Valley.

After release of the Report and Order, Sparta-Tomah engaged Evans Associates ("Evans"), a consulting broadcast engineering firm, to review the Commission's findings. The results of that study are attached hereto. Evans reports that the Report and

² All population figures are excerpted from official US Census data.

Order contains erroneous technical and engineering findings leading to an improper conclusion:

- 1) The finding that Channels 203 and 207 would be short-spaced to authorizations for other facilities, thus precluding their use at Lanesboro and Westby, is incorrect. Non-commercial reserved FM channels must comply with §73.509 of the rules. Channels 203A and 207A at Lanesboro and Westby respectively would cause no prohibited overlap with any other authorized facilities and are, therefore, available. Moreover, Bluff Country has filed a construction permit application (BRED-980520MB) for a new radio station on reserved Channel 203 at Lanesboro stating therein that its proposed facilities comply with the Commission's rules.
- 2) The finding that Channel 280A would provide "proper coverage" at Westby from the proposed reference coordinates is incorrect. Evans confirms that the proposed commercial allotment would not provide a city-grade contour service to the entire community as required by §73.315 of the rules. See, Greenwood, South Carolina, 3 FCC Rcd 4108 (1988), corrected, 3 FCC Rcd 4374 (1988) (allotment standard requires 100% city grade coverage pursuant to §73.315 of the Rules). Accordingly, the allotment of Channel 280A to Westby must be rescinded.

While the Commission's allotment policies developed pursuant to Section 307(b) of the Communications Act generally favor allotting a first local service to every community of an appre-

ciable size, this presumption is rebuttable. For example, as described in Santee Cooper, 99 FCC 2d 781 (Rev. Bd. 1984) citing, Ruarch Associates, 99 FCC 2d 338 (Rev. Bd. 1984) affirmed, 101 FCC 2d 1358 (1985), it does not appear that the Commission has ever granted a dispositive Section 307(b) preference to a community with a population of less than 1000. Accordingly, as Lanesboro and Coon Valley each has a population of less 1000, neither is entitled to a dispositive 307(b) preference for first local service. Hence, the Commission must consider the relative needs of each community for a new service as well as other public interest factors.

Thus, the Commission must determine which of two actions better serves the public interest: (1) allotment of Channel 280A to Coon Valley, with Channel 203 available at Lanesboro, or (2) allotment of Channel 280A at Lanesboro in addition to the likely use of Channel 203 there, leaving Coon Valley without a station.³

Existing Service

Pursuant to Greenup, Athens, Kentucky, 6 FCC Rcd 1493 (1991), when determining the number of "existing services" in a market, the Commission will count the potential service to be offered by vacant allotments as well as assume maximum service from those assignments operated with less than maximum facilities. As there is no Table of Allotments for Channels 201-220,

³ No entity other than Bluff Country expressed an interest in applying for a station at Lanesboro and, as noted above, Bluff Country has a pending application for a new FM station there.

the potential and likely use of reserved Channel 203⁴ at Lanesboro, as shown by Bluff Country's pending application, is fully analogous to a vacant allotment in the commercial band, for both represent potential radio service. Moreover, an existing construction permit application, such as the one filed by Bluff Country for Channel 203, evidences a stronger commitment and intent to provide new service than a vacant allotment (or unrealized maximum service), and should be counted as existing service at Lanesboro. Attributing existing service to Lanesboro favors the allotment of Channel 280A as a first local service at Coon Valley.

Population

As shown by U.S. Census data, between 1980 and 1990 Coon Valley's population grew from 758 to 817, a 7.2% increase. However, during the same period, Lanesboro's population declined from 923 to 858, a 7% decrease. In addition, as shown by Sparta-Tomah's reply comments, the Channel 280A allotment at Coon Valley will serve 113,442 people in its 1 mV/m contour, while its use at Lanesboro would serve only 25,287 people, over a 300% difference. The Commission stated in Greenup, Kentucky, 4 FCC Rcd 3843, ¶13 (MMB 1989), rev'd on other grounds, 6 FCC Rcd 1493 (1991) that the 1.0 mV/m signal strength contour has long been employed as a measure of the extent of coverage for all classes of FM stations,

⁴ Noncommercial stations are considered in comparing the number of aural reception services in different communities. Channel 32 Broadcasting Company, 6 FCC Rcd 5188 (1991), Faribault, Blooming Prairie, Northfield, and New Prague, Minnesota 7 FCC Rcd 3837 (MMB 1992).

and that it is the contour used for the determination of coverage areas to be compared when competing proposals for allotment of new channels are at issue. Accordingly, the population to be served with the 1 mV/m contour of the various proposals addressed herein is a very important factor in this proceeding.

Economic Development

As stated on the attached letters from the Coon Valley Village Board and Mike Huebsch, the area's representative to the Wisconsin General Assembly, there is no station which focuses on the local needs and interests of Coon Valley residents. In addition, the community has an industrial park for business and economic development and is preparing to annex land for additional growth. Both letters strongly affirm the need for a first local service at Coon Valley.

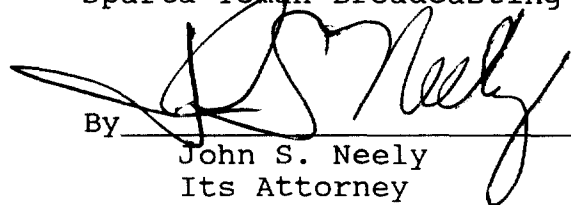
This is the first opportunity that Sparta-Tomah has had to respond to the Commission's independent findings and conclusions in the Report and Order. Reconsideration is warranted because of incorrect findings led the Commission to an erroneous ruling. Based on corrected analysis, the most appropriate and efficient distribution of radio service as required by §307(b) of the Communications Act is to grant Sparta-Tomah's request. Bluff Country's proposal and desire for new noncommercial service at Lanesboro and Westby is best satisfied by the non-commercial Channels 203A and 207A which are available there. Sparta-Tomah's petition for a commercial service is satisfied by allotting Channel 280A at Coon Valley. Moreover, Channel 280A should not

have been allotted to Westby, as the defective allotment will not provide the requisite service to that community.

Accordingly, §73.202 of the rules should be amended as set forth in Sparta-Tomah's reply comments in this proceeding.

Respectfully Submitted,

Sparta-Tomah Broadcasting Company

By 
John S. Neely
Its Attorney

July 2, 1998

Miller & Miller, P.C.
P.O. Box 33003
Washington, DC 20033



Village of Coon Valley

205 Anderson Street

PO Box 129

Coon Valley, WI 54623

Phone: 608-452-3168

Fax: 608-452-3242

Miller & Miller, P.C.

Attn: John Neely

P.O. Box 33003

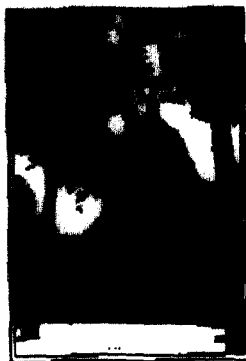
Washington, D.C. 20033

To whom it may concern:

The Village of Coon Valley eagerly anticipates a new radio station located within the Village limits. There are several growth oriented activities taking place which a local radio station would enhance. An opportunity for a new grocery store, an annexation agreement with a residential developer, a TIF district serving an industrial park, and a scenic park offering tourists swimming, fishing, and canoeing are several attractions that would prove to be mutually beneficial to a new radio station..

Thank you for your consideration in this matter.

Coon Valley Village Board



STATE REPRESENTATIVE
MIKE HUEBSCH

Serving The Coulee Region's 94th Assembly District

Children and Families Committee – Chairman
W-2 Oversight Committee – Vice-Chairman

July 1, 1998

Miller & Miller
Attn: John Neely
PO Box 33003
Washington, DC 20033

To whom it may concern:

I am pleased to support the application for a radio license for a new station located in Coon Valley, Wisconsin. I live near Coon Valley and believe this would be a tremendous asset to the citizens of the area.

We are currently served primarily by stations in La Crosse, Sparta, and Viroqua, all of which are more than 15 miles away from Coon Valley. A station based in Coon Valley could focus on the news of the immediate area and serve to invigorate community pride and development.

Many of the smaller towns in the La Crosse area have grown and prospered recently. Given this pattern, I believe Coon Valley will show significant growth in the years ahead. A new station would most certainly be beneficial to the growing community.

As an elected official, I especially appreciate radio for news and community coverage. We currently do not have a station which focuses on these aspects of our community. Therefore, I strongly support this application. Thank you for your time.

Sincerely,

Mike Huebsch
State Representative



ENGINEERING EXHIBIT

**COMMENTS IN SUPPORT OF A PETITION
FOR RECONSIDERATION OF REPORT AND ORDER
MM DOCKET 97-169**

SPARTA-TOMAH BROADCASTING COMPANY, INC.

JUNE 1998

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ENGINEERING STATEMENT

This Engineering Statement and attached exhibits have been prepared on behalf of Sparta-Tomah Broadcasting Company, Inc., by B. Benjamin Evans, P.E. of Evans Associates, Consulting Communications Engineers in Thiensville, Wisconsin. This engineering exhibit is in support of Sparta-Tomah Broadcasting's Petition for Reconsideration of the Report and Order of Docket 97-169, released May 22, 1998. In this proceeding, the Commission assigned FM Channel 280A to Westby, Wisconsin and Lanesboro, Minnesota, as petitioned by Bluff Country Community Radio, and denied Sparta-Tomah's petition to assign this channel to Coon Valley, Wisconsin.

Bluff Country's petition requested **noncommercial** assignments at Westby and Lanesboro. In Sparta-Tomah's reply comments in the above reference proceeding, this affiant stated that:

- reserved noncommercial Channels 207A and 203A are available for application at Westby and Lanesboro, respectively;
- assignment of Channel 280A to Westby would not comply with the city of license coverage requirement.

However, the Commission apparently disagreed with both the above statements. In Paragraph 4 of the Report and Order, the Commission states "our analysis...shows that Channel 207A at Westby would be short spaced to Station WLSU, Channel 205C3, La Crosse, Wisconsin, and Channel 203A at Lanesboro would be short spaced to a construction permit for Channel 204A at Rochester, Minnesota", and in Paragraph 5, the Commission states "our analysis indicates that proper coverage will be provided to the community" if Channel 280A is assigned to Westby. The Commission's statements are erroneous, and this affiant stands by his original determinations.

This affiant has been a broadcast communications consultant for over 17 years, and in that time has prepared hundreds of FM frequency studies and FCC applications for both commercial and noncommercial facilities. He is a Registered Professional Engineer in the State of Wisconsin, a member of the Association of Federal Communications Consulting Engineers, a member of the Society of Broadcast Engineers, and a member of the Institute of Electrical and Electronics Engineers. He holds a Bachelor's Degree in Electrical Engineering from the University of Wisconsin. He is intimately familiar with



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the Commission's policies and rules regarding the assignment of commercial and noncommercial FM broadcast frequencies.

In Sparta-Tomah's reply comments, allocation maps prepared by this applicant were included which demonstrated unequivocally that under Section 73.509:

- A full Class A facility (6 KW ERP, 100 meters antenna HAAT) on Channel 207A could be assigned to Westby if the transmitter is located 7.1 kilometers east of Westby. The facility **would not** cause prohibited contour overlap with WLSU, Channel 205C3, in La Crosse, Wisconsin:
- a full Class A facility on Channel 203A could be assigned to Lanesboro if the transmitter is located 13.5 kilometers northeast of Lanesboro. The facility **would not** cause prohibited contour overlap with a construction permit (BPED-961023ME) for Channel 204A in Rochester, Minnesota.

In making its determination regarding the above channels, the Commission apparently relied on the minimum distance spacings of Section 73.207 for adjacent and second adjacent channel protection, since they described the channels as being "short spaced." However, the use of Section 73.207 spacings is entirely inappropriate for the reserved noncommercial channels (Channels 201-220). Commission rules require the application of the contour protection provisions of Section 73.509 to determine if a noncommercial station on a reserved frequency properly protects and is protected from other stations on the reserved frequencies.

It is important to note here that Channel 207 has been applied for as a Class C2 in Richland Center, Wisconsin (FCC File No. 980309MC) at a transmitter site only 47 kilometers from Westby. This application has not yet been placed on cut-off, and was filed long after Bluff Country filed their petition to assign Channel 280A as a noncommercial channel at Westby. Although this application would be mutually exclusive with a proposal for Channel 207 in Westby, this serves as confirmation that Channel 207 is available in the area.

It is also important to mention that Channel 203A has only recently been applied for in Lanesboro (FCC File No. 980520MB). Surely the Commission would not require any more proof that Channel 203A is available in Lanesboro. The applicant is none other than Bluff Country Community Radio.



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Sparta-Tomah's reply comments also included a map clearly demonstrating that a full Class A facility on Channel 280A, operating with 6 KW ERP with an antenna height of 100 meters HAAT and located at the Westby allotment coordinates (43° 37' 30" N., 90° 41' 50" W.) would not place a predicted 3.16 mV/m signal over the entire city of Westby, as required by FCC rules. Only about 37% of Westby would be encompassed by the 3.16 mV/m contour. In preparing this map, the city limits of Westby were accurately determined, and the distances to the 3.16 mV/m contour were calculated every 5 azimuth degrees and in accordance with the method described in Section 73.313 of the FCC rules.

The engineering exhibits from the reply comments have been attached hereto for reference purposes.

ATTACHED FIGURES

Affidavit

Figure 1 - - - - - Channel 280A Coverage Study - Westby, WI

Figure 2 - - - - - Allocation Study - Channel 207A, Westby, WI

Figure 3 - - - - - Allocation Study - Channel 203A, Lanesboro, MN

AFFIDAVIT

COUNTY OF OZAUKEE

SS:

STATE OF WISCONSIN }


B. BENJAMIN EVANS, being duly sworn upon oath deposes and says:

That his qualifications are a matter of record with the Federal Communications Commission;

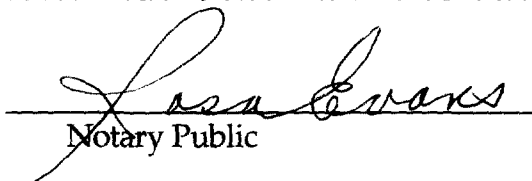
That he is a Consulting TeleCommunications Engineer, a Registered Professional Engineer in the State of Wisconsin, and a partner in the firm of Evans Associates;

That this firm has been retained by Sparta-Tomah Broadcasting Company, Inc. to prepare this engineering exhibit;

That he has either prepared or directly supervised the preparation of all technical information contained in this engineering exhibit, and that the facts stated in this exhibit are true to the best of his knowledge, except statements that are herein stated to be based on information or belief, and as to such statements he believes them to be true.


B. Benjamin Evans, P.E.

Subscribed and sworn to before me this 25th day of June, 1998.

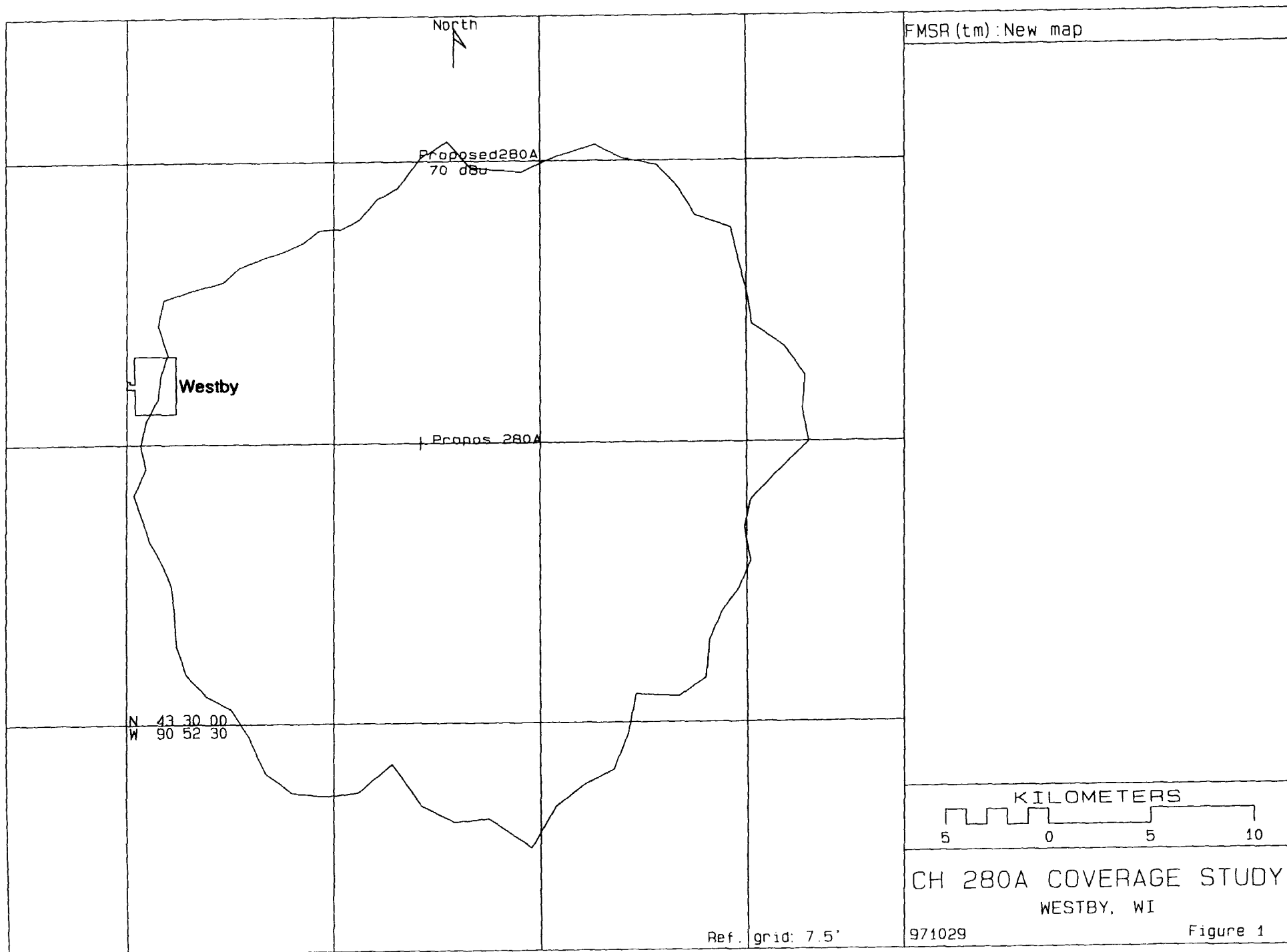
 My Commission expires Sept 24, 2000
Notary Public

NOTICE

This exhibit and the work it is based on represents our best interpretation of existing information, technical data, FCC Rules and policies, and policies and rules of other agencies. However, these data, rules and policies and their interpretation by the FCC or other agencies are constantly changing. Therefore, we do not warrant this work to be acceptable to the FCC or other agency, that any undertaking based on it will be successful, or that further submittals, administrative actions or litigation will not be required by others in support of this proposal or future undertaking. In the event of errors, our liability is strictly limited to replacement of this document with a corrected one. Liability for consequential damages is specifically disclaimed. Favorable action on this application by the FCC, FAA or other federal and state agencies is not guaranteed.

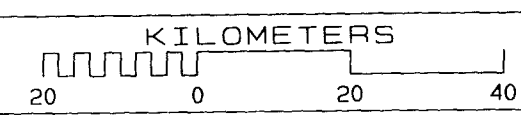
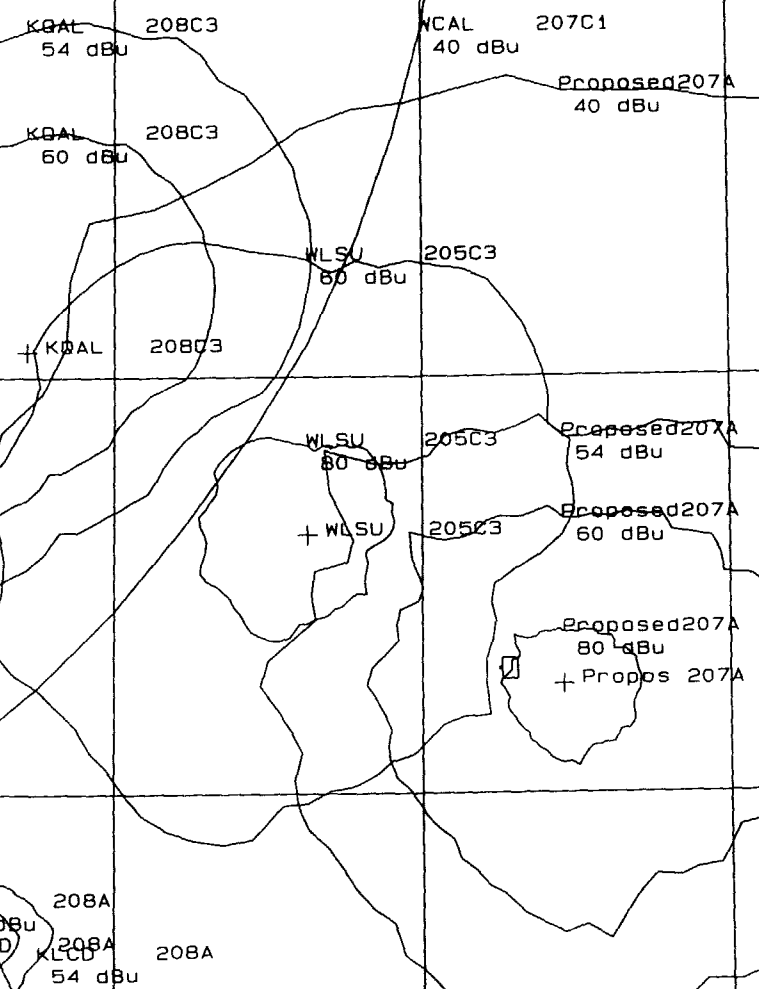
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North

FMSR(tm):New map



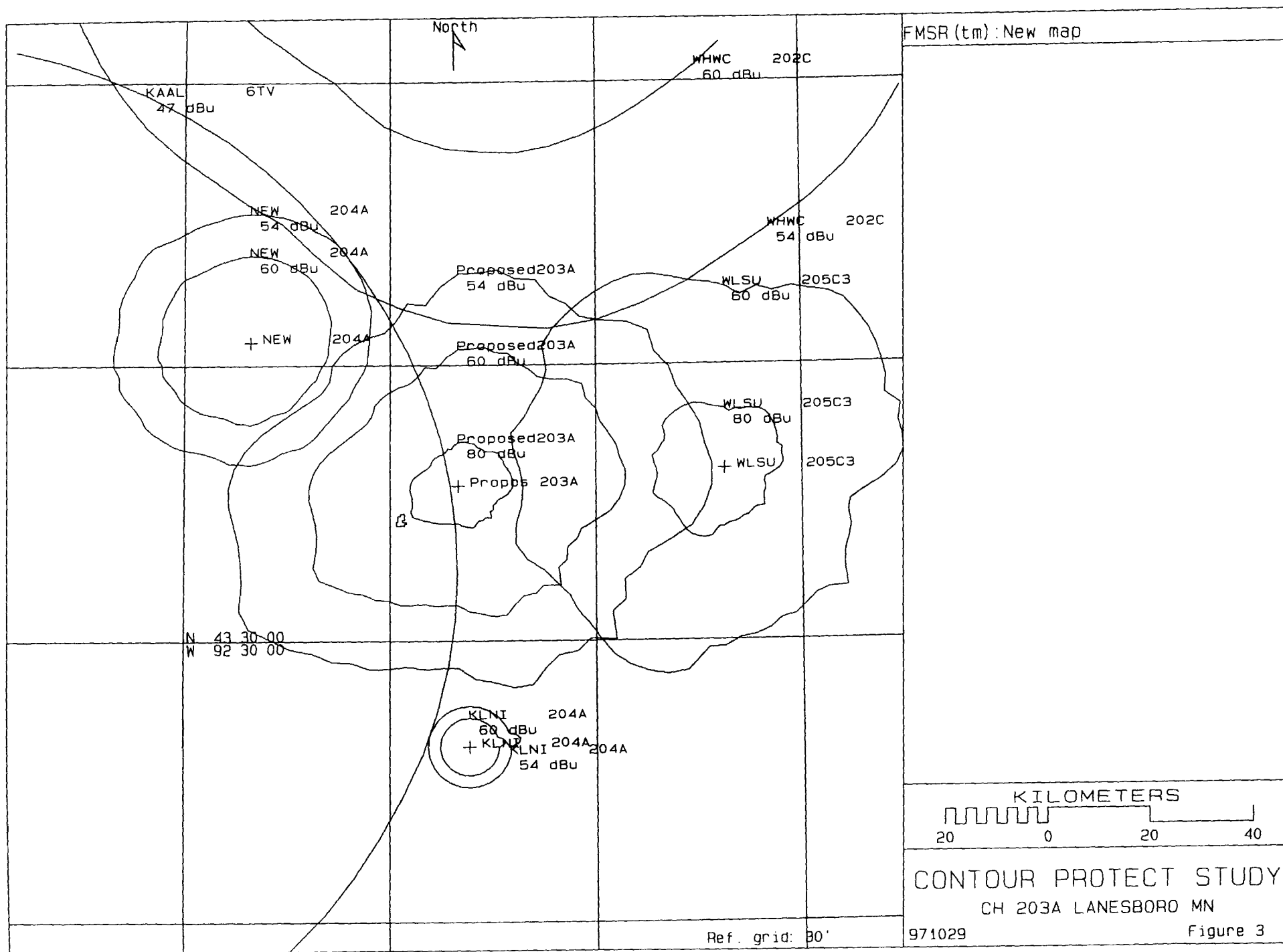
N 43 00 00
W 92 00 00

Ref. grid: 30'

CONTOUR PROTECT STUDY
CH 207A WESTBY WI

971029

Figure 2



CERTIFICATE OF SERVICE

I hereby certify that on this 2 day of July, 1998, a copy of the foregoing document was placed in the United States mail, first class postage prepaid, addressed to the following:

Jason Roberts, Esq.
Fisher Wayland Cooper Leader and Zaragoza, LLP
Suite 400
2001 Pennsylvania Ave., N.W.
Washington, DC 20006

A handwritten signature in black ink, appearing to read "J. Roberts", is written over a horizontal line.